



4. The protein powder in the other flavors of Herbal Zen are chemically identical to the protein powder in the identically-flavored Purely Inspired.

5. The Herbal Zen container and the Purely Inspired container are both 7 inches in height and 4.75 inches in diameter.

6. Except for their labels, Herbal Zen containers are physically identical to Purely Inspired containers.

7. There is 1.5 lbs. of protein powder in Herbal Zen and 2.0 lbs. of protein power in Purely Inspired.

8. The fill level in Purely Inspired is 33% higher than the fill level in Herbal Zen.

9. Defendant would have faced no physical, technological, or other obstacle to filling Herbal Zen with 33% more protein powder than it in fact contains.

10. Stores that sell Purely Inspired and Herbal Zen also sell many products whose containers are at least 25% smaller than the Purely Inspired or Herbal Zen containers.

11. The 8.57 oz. Organic Greens container is less than 6 inches in height and less than 3.5 inches in diameter.

12. The 7.17 oz. Organic Greens container is 4.5 inches in height and 3.6 inches in diameter.

13. Containers that are 25% smaller would not impede labeling or handling, encourage pilfering, or preclude tamper-proof devices.

Dated: March 21, 2018

Respectfully submitted,

/s/ C.K. Lee

By: C.K. Lee, Esq.

**LEE LITIGATION GROUP, PLLC**

C.K. Lee (CL 4086)

Anne Seelig (AS 3976)

30 East 39<sup>th</sup> Street, Second Floor

New York, NY 10016

Tel.: 212-465-1180

Fax: 212-465-1181

*Attorneys for Plaintiff and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 21, 2018, I caused the foregoing Plaintiff's Rule 56.1 Statement of Material Facts to be served via ECF upon all counsel of record.

/s/ C.K. Lee  
C.K. Lee, Esq.